



General Assembly

January Session, 2017

Committee Bill No. 6741

LCO No. 3526



Referred to Committee on COMMITTEE ON CHILDREN

Introduced by:
(KID)

***AN ACT CONCERNING THE RIGHT OF COUNSEL TO ACCESS
RECORDS IN CERTAIN ABUSE AND NEGLECT PROCEEDINGS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-129a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2017*):

3 In proceedings in the Superior Court under section 46b-129:

4 (1) The court may order the child, the parents, the guardian, or other
5 persons accused by a competent witness of abusing the child, to be
6 examined by one or more competent physicians, psychiatrists or
7 psychologists appointed by the court;

8 (2) (A) A child shall be represented by counsel knowledgeable about
9 representing such children who shall be assigned to represent the child
10 by the office of Chief Public Defender, or appointed by the court if
11 there is an immediate need for the appointment of counsel during a
12 court proceeding. If the child's parent or guardian has been accused by
13 a competent witness of abusing the child, upon the assignment or
14 appointment of counsel, the court shall enter an order granting such

15 counsel immediate access to (i) records relating to the child, including,
16 but not limited to, Department of Children and Families and
17 Department of Social Services records and medical, mental health and
18 substance abuse treatment, law enforcement and educational records,
19 without the necessity of securing further releases, and (ii) the child, for
20 the purpose of consulting with the child privately. The court shall give
21 the parties prior notice of such assignment or appointment. Counsel
22 for the child shall act solely as attorney for the child.

23 (B) If a child requiring assignment of counsel in a proceeding under
24 section 46b-129 is represented by an attorney for a minor child in an
25 ongoing probate or family matter proceeding, the court may appoint
26 the attorney to represent the child in the proceeding under section 46b-
27 129, provided (i) such counsel is knowledgeable about representing
28 such children, and (ii) the court notifies the office of Chief Public
29 Defender of the appointment. Any child who is subject to an ongoing
30 probate or family matters proceeding who has been appointed a
31 guardian ad litem in such proceeding shall be assigned a separate
32 guardian ad litem in a proceeding under section 46b-129 if it is deemed
33 necessary pursuant to subparagraph (D) of this subdivision.

34 (C) The primary role of any counsel for the child shall be to
35 advocate for the child in accordance with the Rules of Professional
36 Conduct, except that if the child is incapable of expressing the child's
37 wishes to the child's counsel because of age or other incapacity, the
38 counsel for the child shall advocate for the best interests of the child.

39 (D) If the court, based on evidence before it, or counsel for the child,
40 determines that the child cannot adequately act in his or her own best
41 interests and the child's wishes, as determined by counsel, if followed,
42 could lead to substantial physical, financial or other harm to the child
43 unless protective action is taken, counsel may request and the court
44 may order that a separate guardian ad litem be assigned for the child,
45 in which case the court shall either appoint a guardian ad litem to
46 serve on a voluntary basis or notify the office of Chief Public Defender

47 who shall assign a separate guardian ad litem for the child. The
48 guardian ad litem shall perform an independent investigation of the
49 case and may present at any hearing information pertinent to the
50 court's determination of the best interests of the child. The guardian ad
51 litem shall be subject to cross-examination upon the request of
52 opposing counsel. The guardian ad litem is not required to be an
53 attorney-at-law but shall be knowledgeable about the needs and
54 protection of children and relevant court procedures. If a separate
55 guardian ad litem is assigned, the person previously serving as counsel
56 for the child shall continue to serve as counsel for the child and a
57 different person shall be assigned as guardian ad litem, unless the
58 court for good cause also determines that a different person should
59 serve as counsel for the child, in which case the court shall notify the
60 office of Chief Public Defender who shall assign a different person as
61 counsel for the child. No person who has served as both counsel and
62 guardian ad litem for a child shall thereafter serve solely as the child's
63 guardian ad litem.

64 (E) The counsel and guardian ad litem's fees, if any, shall be paid by
65 the office of Chief Public Defender unless the parents or guardian, or
66 the estate of the child, are able to pay, in which case the court shall
67 assess the rate the parent or guardian is able to pay and the office of
68 Chief Public Defender may seek reimbursement for the costs of
69 representation from the parents, guardian or estate of the child;

70 (3) The privilege against the disclosure of communications between
71 husband and wife shall be inapplicable and either may testify as to any
72 relevant matter; and

73 (4) Evidence that the child has been abused or has sustained a
74 nonaccidental injury shall constitute prima facie evidence that shall be
75 sufficient to support an adjudication that such child is uncared for or
76 neglected.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	October 1, 2017	46b-129a
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Statement of Purpose:

To provide assigned or appointed counsel in abuse and neglect proceedings, where a child's parent or guardian is accused of such abuse and neglect, immediate access to the child and the child's records.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: REP. LUXENBERG, 12th Dist.

H.B. 6741